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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re the Reissue Application of Lee)

Primary Examiner: not assigned

Serial No. 10/039,578)

Group Art Unit: 3743

Filed: 10/26/2001)

Attorney Docket No.: 01-10-1769

Title: Safety apparatus of piezoelectric
lighter)**PETITION PURSUANT TO 37 CFR § 1.172(a) and 37 CFR § 1.47 (b)**

Hon. Commissioner of
Patents and Trademarks
Box REISSUE
Washington, D.C. 20231

Sir/Madam:

Applicant submits this petition in response to the Patent Office's Notice to File Missing Parts of Reissue Application, dated March 19, 2002. Assignee has been unable to locate the inventor to sign the reissue declaration by the inventor and submits this petition pursuant to 37 CFR § 1.172(a) and 37 CFR 1.47(b) and requests that the Commissioner permit the Assignee to proceed with the prosecution of this reissue application, Serial No. 10/039,578, without a signed declaration from the inventor. Please also find enclosed a Petition for Extension of Time under 37 CFR 1.136(a) with the fee for a 3-Month Extension (Small Entity).

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Background of this Petition

Mr. Chun Ching Yen was the named assignee of the entire right, title and interest in the patent application Serial No. 08/881,964 (filed: 06/05/1997). *See* Sharra Dec. ¶ 2. On September 10, 1999, Assignee Chun Ching Yen assigned his entire right title and interest in United States Patent Application Serial No., 08/881,964 to Calico Brands, Inc. On September 17, 2002, this assignment was recorded with the United States Patent and Trademark Office. *See* Sharra Dec. ¶ 3.

On October 26, 2001, the Assignees, Calico Brands, Inc. filed a reissue application for United States Patent No. 5,971,751 (Issued: 10/26/1999). *See* Sharra Dec. ¶ 4. This October 26, 2001 filing did not include the Reissue Declaration by the Inventor as the inventor could not be located. *See* Sharra Dec. ¶ 4. On March 19, 2002, the Patent Office mailed a Notice to File Missing Parts of Reissue Application, which stated that the oath or declaration is missing. *See* Sharra Dec. ¶ 4.

After the October 26, 2001 filing, Reissue Applicant and Assignee, Calico Brands, Inc. attempted to contact the inventor Thomas Ping Hua Lee several times over the last several months without success. *See* Sharra Dec. ¶ 5.

In July 2002, Assignee's counsel continued in the attempt to locate Mr. Thomas Ping Hua Lee for signature of the Reissue Declaration. A review of various search engines and identity locators has failed to locate the inventor, Mr. Lee. Search results either provided incorrect information, or resulted in no information at all. *See* Sharra Dec. ¶ 6.

On July 26, 2002, Assignee's counsel sent a letter to Mr. Thomas Ping Hua Lee via certified mail at his last known address, 128 Brent Circle, Industry, CA 91789 (this address is actually located on the border of Industry and Walnut, CA). The letter requested that Mr. Lee review the Reissue Application and sign the reissue application declaration by the inventor, included with the letter. Also included was a self-addressed stamped envelope to send back the reissue application declaration by the inventor. *See Sharra Dec.* ¶ 7. The United States Postal Service recorded the delivery of this letter on July 29, 2002. *See Sharra Dec.* ¶ 8. However, Assignee's counsel has not as of yet received any response from Mr. Lee. *See Sharra Dec.* ¶ 9.

Discussion of the Applicable Law

The applicable law that concerns Assignee's petition to the Commissioner to permit the Assignee to proceed with the prosecution of this reissue application is 37 CFR § 1.172 concerning Applicants and Assignees and 37 CFR § 1.47 concerning filing when an inventor refuses to sign or cannot be reached.

37 CFR § 1.172(a) states:

A reissue oath must be signed and sworn to or declaration made by the inventor or inventors except as otherwise provided (see §§ 1.42, 1.43, 1.47), and must be accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent, but a reissue oath may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. All assignees consenting to the reissue must establish their ownership interest in the patent by filing in the reissue application a submission in accordance with the provisions of § 3.73(b) of this chapter.

37 CFR § 1.47(b) states:

Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

Pursuant to 37 CFR § 1.172(a) in light of 37 CFR § 1.47, the Assignee respectfully requests that the Commissioner accept this application on petition of the Assignee, Calico Brands, Inc. Assignee, Calico Brands, Inc. is sole owner of the entire right, title and interest in United States Patent No. 5,971,751 by way of assignment duly recorded with the United States Patent and Trademark Office on September 17, 1999, Reel/Frame No. 010292/0240 in accord with 37 CFR § 3.73(b). Assignee Calico Brands has been unsuccessful in its attempts to contact inventor Mr. Lee. Assignee's attorney has been equally unsuccessful in locating Mr. Lee through numerous attempts and searches. As a result of Mr. Lee's unavailability, Assignee would be irreparably damaged by not being able to rectify the error upon which this Reissue Application is based, claiming less than the inventor had a right to claim in the patent in original claims 1-6.

As a result, the Assignee submits this Petition with the Declaration of Lee Fredric Sharra, with the attached unsigned inventor's reissue application declaration. Assignee will continue in its diligence in attempting to contact the inventor. If at any time

Assignee is able to obtain the signature of inventor, Assignee will submit the signed declaration. The Assignees request that the Declaration of Lee Fredric Sharra be considered the required Statement of Facts for this petition. The required fee for submitting said declaration of inventorship is provided with this petition. If insufficient fees are supplied, the Commissioner is authorized to withdraw sufficient fees from the Trojan Law Offices Deposit Account No. 50-0703.

Please also find enclosed a Petition for Extension of Time (3 mo.), the Commissioner is requested to withdraw the required amount from Trojan Law Offices Deposit Acct. No. 50-0703 (Small Entity), in order to timely respond to the Notice to File Missing Parts of Nonprovisional Application, dated March 19, 2002.

Last Known Address of Mr. Thomas Ping Hua Lee

The Assignee has not been able to obtain any updated information for the current mailing address of the inventor, Ms. Thomas Ping Hua Lee. As a result, the Assignee provides the address of Mr. Lee as, 128 Brent Circle, Walnut, CA 91789-305.

Summary

For the foregoing reasons, it is requested that the Commissioner permit the Assignee to proceed with the prosecution of the reissue application without a signed declaration from the inventor because the inventor cannot be found, and the

Commissioner accept the attached Declaration to fulfill the requirements pursuant to 37 CFR 1.53 and 1.47(b) and as responsive to the Notice of Missing Parts.

Respectfully Submitted,

TROJAN LAW OFFICES
by

Dated: Aug 19, 2002

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